

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
Telecommunications Carriers Eligible to)	
Receive Universal Service Support)	
)	
Cross Cable, LLC)	WC Docket No. 09-197
)	
Petition for Streamlined Designation as a)	
Lifeline Broadband Provider Eligible)	
Telecommunications Carrier)	
)	

**REQUEST OF THE PUBLIC UTILITY DIVISION OF THE OKLAHOMA
CORPORATION COMMISSION TO HOLD IN ABEYANCE THE PETITION OF
CROSS CABLE, LLC FOR STREAMLINED DESIGNATION AS A LIFELINE
BROADBAND PROVIDER ELIGIBLE TELECOMMUNICATIONS CARRIER**

Cross Cable, LLC (“Cross Cable”) has requested that the Federal Communications Commission (“FCC” or “Commission”) grant it streamlined designation as a Lifeline Broadband Provider (“LBP”) eligible telecommunications carrier (“ETC”) under the FCC’s newly created Lifeline Broadband Provider (“LBP”) classification,¹ pursuant to “section 214(e) of the Communications Act of 1934, as Amended (“the Act”), 47 U.S.C. § 214(e) and section 54.202 of the Federal Communications Commission’s (“Commission’s” or “FCC’s”) rules, 47 C.F.R. § 54.202.”

Cross Cable, in requesting LBP designation, asserts that it will “promote the public interest by providing eligible low-income consumers a competitor in the marketplace for Lifeline

¹ See, *In the Matter of Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund*, WC Docket Nos. 11-42, 09-197, 10-90, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (released April 27, 2016) (“Lifeline Modernization Order”).

services.” Cross Cable further asserts that its entry in the Lifeline market “will create competitive pressure on all Lifeline providers, resulting in a higher level of service quality and more competitive pricing and advantageous service options for Lifeline service for eligible consumers in Oklahoma.” Cross Cable seems to define its requested service area for ETC designation as the areas within the communities of Checotah, OK, Whitefield, OK, and Stigler, OK where Cross Cable owns facilities.² Cross Cable further asserts that it qualifies for the streamlined designation process afforded to LBP ETC designation requests under the Lifeline Modernization Order and 47 C.F.R. § 54.202(d)(1).³

I. SUMMARY

The Public Utility Division of the Oklahoma Corporation Commission (“PUD”) requests that the Federal Communications Commission (“FCC” or “Commission”) hold in abeyance the processing of Cross Cable, LLC (“Cross Cable”) Petition for Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier (“Petition”) requesting designation as a Lifeline Broadband Provider (“LBP”) eligible telecommunications carrier (“ETC”), “pursuant to section 214(e) of the Communications Act of 1934, as Amended (“the Act”), and Section 54.202 of the Federal Communications Commission’s (“Commission’s” or “FCC’s”) rules, 47 C.F.R. § 54.202.”

Cross Cable’s Petition seeks an LBP ETC designation within specific areas of Oklahoma. Cross Cable does not currently hold an ETC designation granted by the Oklahoma Corporation Commission (“OCC”). Cross Cable asserts that its Petition qualifies for streamlined treatment

² PUD would note that these communities, as displayed in Attachment B to the Petition, are within either the Checotah or Stigler exchanges. Neither of which is served by a rural telephone company.

³ If the petitioning common carrier has offered broadband Internet access service to the public for at least two years before the date of filing and serves at least 1,000 non-Lifeline customers with voice telephony and/or broadband Internet access service as of the date of the filing, the common carrier’s petition for designation as an Lifeline Broadband Provider eligible telecommunications carrier shall be deemed granted within 60 days of the submission of a completed filing unless the Commission notifies the common carrier that the grant will not be automatically effective.

under 47 C.F.R. § 54.202(d)(1). Where ETC designations in Oklahoma have historically been granted by the OCC in accordance with Section 214(e)(2) of the Act, this application represents a request for an ETC designation from which the states are preempted from granting, and leaves such designation the exclusive domain of the FCC.⁴

There are two critical issues raised by the preemption of state authority to designate LBP ETCs. One issue is whether the FCC has authority to preempt the states in this area, and issue its own ETC designations. The United States Court of Appeals for the District of Columbia is currently reviewing this important question.⁵ The other critical issue is what role, if any, state regulatory agencies, such as the OCC, will have in monitoring the activities of these federally designated LBPs, and enforcing applicable state and federal Lifeline rules. This issue, as well as several closely related issues, is currently before the FCC.⁶

Beyond these critical issues, PUD has additional concerns with how the streamlined approval process provided at 47 C.F.R. § 54.202(d)(1), for which Cross Cable asserts it is qualified, affords the FCC adequate time to review and determine that the requested designation is consistent with the public interest, convenience and necessity in accordance with 47 U.S.C. § 214(e)(6).

PUD reviews and provides recommendations in response to requests for ETC designation filed with the OCC. Further, PUD, through its Consumer Services group, also engages in monitoring and enforcement activities to ensure ETCs adhere to state and federal rules and laws regarding the provision of Lifeline services in Oklahoma. As such, PUD is concerned about the potential negative impacts to the Lifeline market if the FCC grants ETC designation where

⁴ 47 C.F.R. § 54.201(j).

⁵ See, *National Association of Regulatory Utility Commissioners v. Federal Communications Commission and the United States of America* Case No. 16-1170 Petition for Review (filed June 3, 2016).

⁶ See, *Petition for Clarification of the Pennsylvania Public Utility Commission*, WC Docket Nos. 11-42, 09-197, and 10-90, dated June 23, 2016.

statutory authority does not exist and the loss of what, to date, has been effective oversight by states, such as Oklahoma, of the ETCs participating in the Lifeline market. State oversight includes the implementation and enforcement of protections to guard against waste, fraud and abuse in the Lifeline program. PUD is also concerned, notwithstanding the aforementioned issues, that the streamlined approval process does not allow enough time for the FCC to fulfill its obligations under the statute for designating ETCs nor to comply with the FCC's own requirements for designating ETCs.

Given that these issues are pending before the FCC and the D.C. Circuit, combined with the fact that the streamlined approval process may not afford the FCC adequate time to fulfill its statutory obligations, PUD believes the best and most prudent course would be to hold the processing of this Petition in abeyance until these issues have been resolved.

Of critical concern is that the streamlined process for designating LBP ETCs will result in the automatic grant of the requested designation in 60 days, which will inevitably occur prior to ruling from the FCC or D.C. Circuit. (emphasis added) Accordingly, PUD further requests the FCC to notify Cross Cable that its Petition will not be deemed granted in 60 days, thereby stopping the "clock" and then hold the processing of the Petition in abeyance until such time as the critical issues of authority and enforcement can be resolved. Such a step by the FCC is clearly within its authority. 47 C.F.R. § 54.202(d)(1) provides that the FCC can notify the common carrier that "the grant will not be automatically effective." Further, a decision to hold Cross Cable's Petition in abeyance would be congruent with the FCC's request that the D.C. Circuit Court hold the consolidated cases, which include NARUC's Petition for Review, in abeyance pending action by the FCC on petitions for administrative reconsideration and clarification (this would include the Pennsylvania Public Utility Commission's Petition for

Clarification) of the order under review.⁷ Additionally, the FCC, by holding this Petition in abeyance, will ensure that it has adequate time to meet all of its statutory obligations in designating ETCs.

For these reasons, PUD respectfully requests the FCC to notify Cross Cable that its Petition will not be granted automatically within 60 days, and then hold the processing of the Petition in abeyance until the question of designating authority has been resolved and clarification has been provided as to the enforcement responsibilities and capabilities of state regulatory agencies with regard to the LBP ETCs. The FCC can then process the Petition with the benefit of these issues being resolved and the time necessary to comply with applicable statutory and rule requirements.

II. Background

The OCC has taken an active and effective role in both designating ETCs for purposes of providing Lifeline services as well as enforcing state and federal rules applicable to the offering and provision of Lifeline services in Oklahoma. The OCC has designated twenty-six (26) wireless ETCs for participation in the federal universal service support program, including and/or limited to the Lifeline program, in accordance with 47 U.S.C. § 214(e), 47 C.F.R. § 54.101, 47 C.F.R. § 54.201, 47 C.F.R. § 54.202, and 47 C.F.R. § 54.207.

Also, the OCC has been proactive in its enforcement of federal and state rules as well as in taking a pro-consumer stance. The OCC has put in place effective rules⁸ that have established necessary and useful requirements for ETCs in Oklahoma. For example, the OCC established parameters around the mobile marketing activities in which most wireless ETCs engage in while

⁷ See, Nat'l Ass'n of Regulatory Util. Comm'rs v. F.C.C., *et al.*, Case Nos. 16-1170 and 16-1219, (2016 D.C. Cir.) Motion of the FCC to Hold Case in Abeyance and to Defer the Filing of the Record, (filed September 29, 2016).

⁸ OAC 165:55-23-1, *et al.*

operating in Oklahoma.⁹ The OCC implemented these rules to ensure that Lifeline consumers could seek and receive service in a safe and reliable manner that would enable them to understand who their provider would be, as well as to know how to go about resolving consumer issues.

As PUD previously indicated in its filed comments,¹⁰ rules were implemented in response to real problems that were being observed. This included “such things as consumers being unable to identify exactly who their Lifeline service provider actually was, let alone how to reach that carrier or how to have a problem resolved; Lifeline wireless handsets showing up at crime scenes and drug busts; Lifeline services being marketed and sold out of car trunks at the side of the road and consumers easily acquiring multiple wireless handsets activated for Lifeline service and then selling those handsets to anyone willing and able to come up with the requisite amount of cash.”¹¹

As a result of PUD’s rules and enforcement efforts, ICON Telecom, Inc. relinquished its ETC designation in Oklahoma.¹² This is particularly illustrative as ICON Telecom, Inc. and its owner, Wesley Chew, were ultimately charged and pled guilty to money laundering and making false statements in conjunction with the fraudulent activities ICON Telecom, Inc. engaged in with the federal Lifeline program.¹³ Further, at the height of the presence of waste, fraud and abuse in the Lifeline program, Lifeline providers in Oklahoma in 2012 received over \$246

⁹ OAC 165:55-23-16 Limitations on Marketing of Supported Services by ETCs (“Mobile Marketing Rules”).

¹⁰ See, *Reply Comments of the Public Utility Division of the Oklahoma Corporation Commission* WC Docket No. 11-42, WC Docket No. 09-197, and WC Docket No. 10-90 (filed August 31, 2015).

¹¹ *Id.* at p. 3.

¹² See, *Cause No. PUD 201300018, Application of Brandy L. Wreath, Director of the Public Utility Division, of the Oklahoma Corporation Commission for a Show Cause Hearing Against ICON Telecom, Inc.*, filed February 14, 2013. See also, *Cause No. EN 201300076, Complaint, Information, Summons, and Notice of Citation for Contempt*, filed August 13, 2013. See also *Cause No. PUD 201300167, In the Matter of the Notification of ICON Telecom, Inc. of Voluntary Relinquishment of ETC Designations*, filed September 17, 2013.

¹³ See, *U.S. v. Chew*, No. CR-14-170-D (W.D. OK, 2014 WL 8108217).

million of federal Lifeline support.¹⁴ That federal support was reduced by over 56% to \$108 million in 2015.¹⁵ There is no doubt that this reduction was connected to the considerable efforts of the OCC and PUD to bring ETCs in Oklahoma into compliance with federal and state Lifeline rules.

PUD believes that any grant of an application for an LBP ETC designation, in advance of the Court ruling on the FCC's legal authority to do so and prior to the FCC's response to the Pennsylvania Public Utility Commission's Petition for Clarification, could permanently undo the significant benefits associated with the undertaking by states, such as Oklahoma, to administer and enforce the state and federal ETC and Lifeline rules.

The Pennsylvania Public Utility Commission clearly points out the unacceptable tension between the Lifeline Modernization Order's preemption of the states' ability to designate LBP ETCs¹⁶ and the failure to specifically and clearly address what role and authority state commissions will have with regard to enforcement, consumer protection and general oversight of the LBP ETCs designated by the FCC. Without such clarification from the FCC, it can be anticipated that any carrier with an LBP ETC designation for Oklahoma will not be considering state requirements in the development of its processes and procedures. Moving forward with LBP ETC designations without clarification will effectively eviscerate all of the pro-consumer and anti-waste, fraud and abuse programs and efforts implemented and administered by Oklahoma and other states. Additionally, to the extent the Lifeline market in Oklahoma is served by two different types of ETCs (i.e., state designation vs. federal designation) with different obligations, problems such as consumer confusion, delays in complaint resolution, and

¹⁴ USAC LI05 Annual Low Income Support Amounts by State and Company – January 2012 through December 2014 (<http://www.usac.org/about/tools/fcc/filings/2015/q2.aspx>).

¹⁵ USAC LI05 Annual Low Income Support Amounts by State and Company – January 2013 through December 2015.xls (<http://www.usac.org/about/tools/fcc/filings/2015/q2.aspx>).

¹⁶ *Lifeline Modernization Order* at ¶232.

some ETCs being disadvantaged in the marketplace as compared to others, will negatively impact the entire market. Further, without adequate clarification, such problems begin upon the effective date of an FCC designation of an LBP ETC.

In its recent Public Notice (DA 16-1118, released September 30, 2016) there seems to be an attempt to provide guidance to the states as to their role in regulating LBP ETCs designated by the FCC. The FCC stated at ¶19: “Indeed, the *Lifeline Modernization Order* preserved the ‘roles that states have traditionally played in Lifeline’ and recognized the states’ ability to regulate ETCs subject to the states jurisdiction and applicable state laws.” However, the footnote to this statement references ¶¶ 288-289 of the *Lifeline Modernization Order*. At ¶288, the FCC stated: “To the extent a provider only seeks the federal LBP, however, providers are not required to seek approval or designation from the states.” While PUD would fully anticipate that an ETC seeking designation for purposes of participating in the Oklahoma Lifeline Fund would be subject to the laws and rules of Oklahoma, the fundamental question is what authority a state has to regulate LBP ETCs designated by the FCC for purposes of only receiving federal support for Lifeline service. PUD is concerned that, given the lack of clarity, an LBP ETC would take the position that they are not required to comply with any state regulation of its operation as an LBP ETC, thereby leaving states with the burden to resolve this question.

An even more fundamental problem with the FCC processing the Cross Cable Petition for designation as an LBP ETC, is that there is an open question as to whether or not the FCC actually has the authority to make such a designation. While the FCC provides its rationale as to why states are preempted from designating LBP ETCs, NARUC’s Petition for Review¹⁷ points out that the FCC’s action is inconsistent with the statutory language at 47 U.S.C. §214(e)(2) which provides states with the authority to designate ETCs, thereby raising a legitimate concern

¹⁷ *Supra* n.5.

and question. PUD believes that this is a question for the courts and the D.C. Circuit's ruling on this important question is critical in order to correctly implement the process for the newly created LBP ETC designation. The concern today is that to grant Cross Cable's Petition on a streamlined basis with an automatic "deemed granted" result in sixty (60) days will, given that exceptionally short timeline, inappropriately circumvent the D.C. Circuit's review of this important question and potentially disrupt the Lifeline market. This will cause consumer confusion as well as unnecessary expense and effort by both state regulators and ETCs themselves in the event the court determines that the FCC does not have the authority it will exercise in granting Cross Cable's Petition (whether on a streamlined basis or not).

Furthermore, the likelihood that the sixty (60) day clock will run prior to the Court's completion of its review of this question is a certainty. The Motion of the FCC to Hold Case in Abeyance and to Defer the Filing of the Record filed with the D.C. Circuit suggests that allowing the FCC to resolve the administrative reconsideration and clarification petitions "may simplify judicial review by resolving issues that the Court would otherwise need to address, or by clarifying or providing additional analysis of issues that remain in dispute."¹⁸ The filing further indicates that, if the Court decides to hold the cases in abeyance, the FCC is proposing to advise the Court and the parties at 90-day intervals of the status of the agency's proceedings. Given this, it is clear that, unless the FCC takes steps to avoid the streamlined "automatic" 60 day approval process, Cross Cable will have its LBP ETC designation and operations underway for a considerable amount of time before all of these important issues are resolved. Therefore, the FCC would create a situation that could, at best, create significant impairment to consumers, and

¹⁸ Nat'l Ass'n of Regulatory Util. Comm'rs v. F.C.C., *et al.*, Nos. 16-1170 and 16-1219 (2016 D.C. Cir.) Motion of the FCC to Hold Case in Abeyance and to Defer the Filing of the Record at p. 6 (filed September 29, 2016).

require considerable effort and resources from all parties to “undo” the approval and associated operations or, at worst, create a situation that cannot be corrected at all.

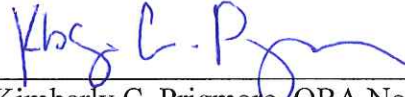
III. Relief Requested

For the reasons stated above, PUD respectfully requests that the FCC notify Cross Cable that its LBP ETC Petition will not be granted on a streamlined basis and then hold the processing of the Petition in abeyance pending further action by the D.C. Circuit and the FCC.

The FCC’s rules at 47 C.F.R. § 54.202(d)(1) already provide the FCC with the ability to notify Cross Cable that grant of its Petition “will not be automatically effective.” This ability and authority exists even if the FCC’s review confirms that Cross Cable meets the qualifications for the streamlined processing of its LBP ETC application. Once the 60 day “clock” has been stopped, the FCC should hold the processing of this Petition in abeyance pending 1) the D.C. Circuit Court’s ruling on NARUC’s Petition for Review; and 2) the FCC’s response to the Pennsylvania Public Utility Commission’s Petition for Clarification.

The FCC, in taking the requested action, will be able to process Cross Cable’s Petition with a full understanding of its authority to grant the relief requested, and can take the time to consider Oklahoma’s accomplishments in assisting Lifeline consumers and curtailing waste, fraud and abuse. The FCC can then make a fully informed determination as to whether or not such positive efforts will continue under this newly formed LBP ETC designation process, or if the state’s role in curtailing waste, fraud and abuse is going to be abandoned for an, as yet to be determined, alternative structure of regulatory oversight for such carriers. Finally, by removing Cross Cable’s Petition from the streamlined, automatic approval process, the FCC can also ensure that it has adequate time to fulfill all of its statutory obligations applicable to reviewing and granting requests for ETC designation.

Respectfully submitted,



Kimberly C. Prigmore, OBA No. 21781

k.prigmore@occemail.com

Deputy General Counsel

Oklahoma Corporation Commission

P.O. Box 52000

Oklahoma City, OK 73152-2000

Tel. (405) 522-1638

*Counsel to Public Utility Division of
the Oklahoma Corporation Commission*